BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH

AT BILASPUR (C.G.)

Single Bench

SECOND APPEAL NO. 369 /2006 - S. B.

APPELLANT
DEFENDANT

A.K. Ghai, aged about 40 years, son of Late P.N. Ghai, resident of T.D.S. Office, Singhpur Road, Shahdol (Madhya Pradesh)

VERSUS

RESPONDENTS
PLAINTIFFS

1. Shah Aalam, aged about 36 years son of Shri Rabi Aalam, resident of Santoshi Nagar, Raipur (C.G.)

2. Billu singh @ Tajinder Singh, son of Shri Amrit Singh, resident of Station Road, Near Gurudwara, Chhabra Rest House, Raipur (C.G.)

2273/06 ... Abhay T.U. ... 08/08/06

32 of Rent Control Act.

SECOND APPEAL UNDER SECTION 100 OF THE CIVIL PROCEDURE CODE, 1908

21-8-06

(45)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..SA.No. 379/2006..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	11.9.2006 Shri Abhay Tiwari, learned counsel for the appellant. Heard. The appellant has preferred this second appeal under Section 32 of the C.G. Accommodation Control Act against the order dated 20th July 2006 passed in Misc. Civil Appeal No. 11/2005 by learned IX Additional District Judge (F.T.C.) Raipur by which the appeal preferred by Billu alias Tajindar Singh against the order dated 3/8/2005 passed by Rent Controlling Authority Raipur in case No. 5/90(4)-2004-05 has been dismissed. Learned counsel for the appellant submits that the instant appeal has been preferred by the appellant purely on the following substantial question of law: Whether the learned appellate Court was justified in deciding memo of appeal of Billu alias Tajinder-non-applicant No.2? Learned counsel for the appellant submits that before the Rent Controlling Authority an application under Section 38 of the Rent Control Act was preferred by the respondent No.1 Shah Aalam arraying the present appellant and respondent No.2 as party with a grievances that the non-applicants have illegally locked his tenanted premises and they should be directed to open the same and in that proceedings an application under Section 39 Rules 1 and 2 was also filed praying for interim relief for direction to open the lock.	

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक SA. No. 369/2006 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The Rent Controlling Tribunal after hearing the parties allowed the application for temporary injunction and directed them to open the lock. The respondent No.2 preferred an appeal against the order dated 3/8/2005 before the First Appellate Court under Section 31 of the Act however the appellant did not prefer any appeal against the order of the tribunal. It is argued that though the appellant has not preferred any appeal against the order of the tribunal, nevertheless it was incumbent upon the respondent No.2 to array the present appellant as party in memo of appeal and the appellate Court has committed an illegality by passing the impugned order without affording any opportunity of hearing to the appellant who had admittedly the owner of the tenanted premises.

I have heard the learned counsel for the appellant, perused the documents annexed with the memo of appeal. From perusal of the material available on record the undisputed facts may be summarized as under:-

(i)- The proceeding commenced on the application under Section 38 of the Act that the respondents have locked the tenanted premises and that should be opened to enable him to enter in the tenanted premises and live peacefully.

(ii)- After hearing the parties including the appellant by order dated 3/8/2005, the Tribunal directed that the lock be opened.

(iii)- The present appellant did not prefer any appeal against the order of the tribunal and raised a

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... SA. No. 363/2006 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

grievance for the first time by way of the instant appeal under Section 32 that the first appellate Court committed illegality by deciding the appeal without hearing the appellant.

(iv)- Since the appellant and the respondent No. 2 had locked the tenanted premises of the respondent No.1 as he failed to pay the arrears of rent, the tribunal directed to open lock while deciding the application for temporary injunction.

The appellant did not challenge the above order and as such the above attained finality so far as the present appellant is concerned and therefore the appellant has again challenged it on technical ground that the appeal preferred by respondent No.2 has been decided without hearing the appellant. Thus appeal preferred by the appellant is without any substance and same is liable to be dismissed in the admission stage itself and accordingly it is dismissed.

In view of the above, I.A.No. 2783/2006, I.A.No. 2754/2006 and M.C.P. No. 1503/2006 also stands disposed of.

Sd/-
Dhirendra Mishra
Judge

P.T.O.

14-9-06